

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 81

[CA - ;FRL -]

Clean Air Act Finding of Attainment;

California-Imperial Valley Planning Area;

Particulate Matter of 10 microns or less (PM-10)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to find that the State of California has established to EPA's satisfaction that the Imperial Valley Planning Area (Imperial County), a PM-10 moderate nonattainment area, would have attained the national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM-10) by the applicable Clean Air Act (CAA or the Act) attainment date, December 31, 1994, but for emissions emanating from outside the United States, i.e., Mexico. As a result of this final action, Imperial County will not be subject to a finding of failure to attain and reclassification to serious at this time and will remain a moderate PM-10 nonattainment area.

EFFECTIVE DATE: This action is effective on [Insert date 30 days from the date of publication in the Federal Register].

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region 9 office during normal

business hours. U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office (AIR-2), 75 Hawthorne Street, San Francisco, California 94105.

Electronic Availability

This document is also available as an electronic file on EPA's Region 9 Web Page at <http://www.epa.gov/region09/air>.

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SUPPLEMENTARY INFORMATION:

I. Background

Imperial County is a moderate PM-10 nonattainment area located on the California border with Mexico, with a December 31, 1994 attainment deadline. Under CAA section 188(b)(2)(A), moderate PM-10 nonattainment areas must be reclassified as serious by operation of law after the statutory attainment date if the Administrator finds that the area has failed to attain the NAAQS. However, CAA section 179(B)(d) provides that any area that establishes to the satisfaction of EPA that it would have attained the PM-10 NAAQS by the applicable attainment date but for emissions emanating from outside the United States shall not be subject to the provisions of CAA

section 182(b).

Imperial County and the California Air Resources Board submitted evidence that the County would have attained the PM-10 NAAQS but for transport from Mexico. The primary information prepared by the Imperial County Air Pollution Control District (ICAPCD) is "Imperial County PM-10 Attainment Demonstration" (hereafter referred to as the "179B(d) demonstration") which was transmitted to EPA by the California Air Resources Board (CARB) on July 18, 2001 letter from Michael P. Kenny, Executive Officer, CARB, to Ms. Laura Yoshii, Acting Regional Administrator, EPA Region 9).

Pursuant to CAA section 188(b)(2)(B) of the Act, EPA must publish a notice in the Federal Register identifying those areas that failed to attain the standard and reclassifying the areas to serious. On August 6, 2001, EPA issued two alternative proposals:

- 1) to find that the State of California had established to EPA's satisfaction that Imperial County, a PM-10 moderate nonattainment area, would have attained the NAAQS PM-10 by the applicable Clean Air Act attainment date, December 31, 1994, but for emissions emanating from outside the United States, i.e., Mexico.
- 2) Alternatively, to find that Imperial County did not

attain the PM-10 NAAQS by its CAA mandated attainment date. This proposed finding was based on monitored air quality data for the PM-10 NAAQS during the years 1992-1994. A final action would result in a reclassification to serious PM-10 nonattainment for Imperial County.

These proposed alternative actions were published in a Federal Register notice (66 FR 42187) on August 10, 2001 (proposed rule or notice of proposed rulemaking, NPR). The 30-day public comment period ended on September 10, 2001. EPA requested public comments on both proposals and received ten comment letters from the following:

- Sierra Club/EarthJustice Legal Defense Fund (David S. Baron, Attorney)
- Imperial County Air Pollution Control District (Stephen L. Birdsall, Air Pollution Control Officer)
- Congressman Duncan Hunter, U.S. House of Representatives, Washington, D.C. 20515-0552
- Imperial Valley Vegetable Growers Association (Lauren S. Grizzle, Executive Director)
- Imperial County Farm Bureau (Lauren S. Grizzle, Executive Director)
- California Farm Bureau Federation (Cynthia L. Cory, Director, Environmental Affairs)

- Mar Vista Farms, Inc. (Michael B. Cox, President)
- Nisei Farmers League (Manuel Cunha, Jr., President)
- California Cotton Ginners and Growers Association (Roger A. Isom, Vice President & Director of Technical Services)
- Granite Construction Company (Jeff Mercer, Area manager)

All of the commenters supported EPA's proposed finding of attainment pursuant to section 179B(d) of the CAA, except for the Sierra Club/EarthJustice Legal Defense Fund (Sierra Club).

While the Sierra Club raises some important issues, EPA was aware of these issues prior to the proposed rulemaking and has not been convinced by Sierra Club that the State's 179B(d) demonstration is inadequate and that the finding of nonattainment and reclassification to serious should be finalized. Thus, EPA is finalizing its action to find that the State of California has established that Imperial County would have attained the NAAQS for PM-10 by the applicable CAA attainment date, December 31, 1994, but for emissions emanating from Mexico. Today's rulemaking provides EPA's responses to public comments and finalizes EPA's proposed action.

II. Public Comments and EPA Responses

A. Sierra Club/EarthJustice Legal Defense Fund (David S.

Baron, Attorney)

Comments were submitted by the EarthJustice Legal Defense Fund on behalf of the Sierra Club. In general, the Sierra Club opposes our proposed finding of attainment and asserts that the 179B(d) demonstration does not adequately demonstrate attainment but for the emissions emanating from Mexico. The Sierra Club believes we must finalize our proposed finding of nonattainment and reclassification to serious PM-10 nonattainment for Imperial County.

1. CAA Requires Modeling. The Sierra Club's first group of comments address the need for a modeling demonstration. The Sierra Club asserts that air quality modeling is a requirement under CAA Section 179B(d) and that in order to qualify for a 179B(d) waiver, the state must make a showing that is the equivalent of an attainment demonstration which the Act and EPA's own regulations and guidelines require to be based on air quality modeling. The Sierra Club then discusses how the State's air quality modeling does not adequately demonstrate attainment of the 24-hour and annual PM-10 NAAQS due to deficiencies with the modeling inventory and modeling assumptions which are summarized in EPA's responses below.

EPA's response: EPA disagrees with the Sierra Club that a CAA Section 179(B)(d) waiver must be based on air quality

modeling. CAA section 179B(d) does not require air quality modeling for PM-10 nonattainment areas at international borders, and EPA's guidance relating to serious PM-10 nonattainment areas suggests modeling as one of five methods that may be used to determine attainment but for international transport.¹ In issuing guidance on CAA section 179(B), EPA considered it appropriate to grant states more flexibility in making the "but-for" attainment determination for border areas due to the special difficulties that can be encountered at these areas.

For example, it may be particularly difficult for States to acquire the necessary input data for a valid modeling analysis, including monitored meteorological and air quality data, accurate speciated emissions inventories with temporal and spatial breakdown, and information on day-specific

¹EPA's guidance appears in "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998, August 16, 1994. The guidance lists 5 types of information that could be used to qualify for treatment under section 179B, and provides that "States may use one or more of these types of information or other techniques, depending on their feasibility and applicability, to evaluate the impact of emissions emanating from outside the U.S. on the nonattainment area." The General Preamble goes on to note that "the first 3 examples do not require the State to obtain information from a foreign country." Only the fifth method employs modeling. 59 FR 42001. As discussed in the proposed action, the State submitted information addressing each of the 5 methods. 66 FR 42189-90.

emissions, when such data must be collected in areas outside of the U.S. The acquisition of such data is resource intensive both in terms of money and expert staff time, and the exercise may consume years of preparatory work and then require additional time and expense for quality assurance and data preparation and analysis. In cases where the critical modeling input data are not available or are incomplete or inaccurate, EPA believes that Congress could not have intended to disallow areas from presenting, and EPA from approving, non-modeling evidence of "attainment but for transport."

Although modeling input data were recognized to be sparse, the State's 179B(d) demonstration did attempt to address each of the 5 allowable approaches specified in the General Preamble, including an air quality modeling "but-for" attainment demonstration for both the annual and 24-hour PM-10 NAAQS.

As discussed in the proposed rule, EPA did not base the proposed finding of attainment for the 24-hour PM-10 NAAQS on the State's air quality modeling demonstration. The sensitivity of the 24-hour PM-10 NAAQS to the modeling inputs, coupled with the lack of model validation, led EPA to conclude that, unlike the annual PM-10 NAAQS, the air quality modeling could not be relied upon for the 24-hour PM-10 NAAQS

attainment demonstration. Instead, EPA based its finding of attainment for the 24-hour PM-10 NAAQS on the State's analysis of monitoring sites, meteorological conditions (which involves an analysis of spatial plots, wind roses and back trajectories) and inventory estimates for both sides of the border. EPA believes that these are valid alternative methods for determining attainment but for international transport (see General Preamble at 59 FR 42001).

For the annual PM-10 NAAQS, model performance assessment also raises issues, although these concerns are less than for the 24-hour NAAQS because day-specific modeling inputs and predictions are not needed. Moreover, to determine whether or not Imperial County would have attained the annual PM-10 NAAQS but for international transport does not require modeling precision, due to the fact that the annual arithmetic mean concentrations for 1992-1994 are only slightly above the annual PM-10 NAAQS (51 :g/m³ at Brawley and 56 :g/m³ at Calexico Dichot-Grant Street). All that is required of the model in support of a "but for" demonstration is evidence that at least a small portion of the monitored concentrations was due to transport of pollution from Mexico.

2. Adequacy of the State's Emissions Inventory Input to the Modeling. The Sierra Club comments that the State's modeling

inventory is insufficient because it was not developed for PM-10 modeling, does not reflect peak PM-10 levels, is not a "current" and "accurate" inventory, and does not contain data on actual PM-10 emissions, but is based on the SCOS inventory which is adjusted with invalid assumptions (i.e., percentage of TSP that is PM-10 and correlation of PM-10 emissions to population).

EPA Response: While the modeling inventory for Imperial County was not developed specifically for PM-10 modeling, it does include PM-10 emissions and represents the best available inventory at this time. As discussed in EPA's Technical Support Document (TSD) for the proposed rule, the modeling inventory was derived from the Southern California Ozone Study (SCOS) modeling inventory for a typical summer day. Seasonal adjustments were made to the inventory, and the inventory was scaled, based on population changes, for the years 1992 to 1994. The use of this modeling inventory to represent average annual PM-10 concentrations is an acceptable approach, but the use of this modeling inventory to represent peak PM-10 days is less reliable because emissions of PM-10 are likely to be higher than the seasonal average on peak days. In other words, this inventory is more reliable for the determining attainment of the annual PM-10 NAAQS than for the 24-hour PM-

10 NAAQS.

EPA does not agree that the modeling inventory is insufficient because it is based on the SCOS inventory and adjustments made to that inventory (i.e., percentage of TSP that is PM-10 and correlation of PM-10 emissions to population). As discussed above, the modeling inventory developed is the best available inventory and information at this time. In order to develop a modeling inventory for Imperial County, the State took the SCOS modeling inventory and made adjustments to reflect the PM-10 emissions in Imperial county. For example, the SCOS inventory included emissions of total suspended particulates (TSP). PM-10 is a subset of TSP. In order to to adjust for the SCOS inventory for PM-10 emissions, the State used an adjustment factor of 1.93 which is based on a comparison of the 1997 SCOS inventory to Imperial County's 1995 PM-10 emissions inventory (best available PM-10 inventory). The State also adjusted the inventory for changes in the population since the "vast majority of PM-10 emission in Imperial County are from area sources such as unpaved roads, paved roads and agriculture."² While these may not be the most precise adjustment techniques

²See the State's 179B(d) demonstration (Chapter III.B. Modeling Emissions Inventory) for more detailed information on the how the State's modeling inventory was developed.

for the Imperial County PM-10 modeling inventory, EPA believes these adjustments are reasonable for the annual PM-10 NAAQS.

In general, there are many uncertainties in developing PM-10 inventories. This is partly due to intrinsic variability, but also because socioeconomic surrogate data and location-specific data needed to build a spatially and temporally resolved inventory is sometimes not available. However, EPA believes that the fugitive PM-10 emission estimates and the modeling that uses them are an adequate basis for this action. The State is continuously improving and updating inventory information. The inventory used in the State's demonstration represents the best available PM-10 inventory for the 1992-1994 timeframe.

3. Background Concentration in the Model. The Sierra Club comments that there is no basis for using the annual background concentration of 25 :g/m³ and that it is "the product of pure speculation."

EPA Response: The background concentration level was based on a frequency distribution analysis of measured PM-10 concentrations at monitors in the Imperial County and Mexicali from 1992 to 2000.³ EPA believes the 25 :g/m³ background

³See the State's 179B(d) demonstration (Chapter III.D. Background Concentrations) for more information.

concentration level is a conservative level.

4. Secondary Particles in the Model. The Sierra Club comments that the State's modeling demonstration includes no analysis for secondary particle formation.

EPA Response: While there is no specific discussion of secondary particulates in EPA's proposed rule (66 FR 42187), the analysis provided by the state did account for the formation of secondary particulates. See Imperial County PM10 Attainment Demonstration, Chapter III.B, page 4. In addition the Imperial Valley/Mexicali Cross Border PM-10 Transport Study (Transport Study) provides a filter analysis which indicates that secondary particulates are measured in the range of 2 to 4 :g/m³ for secondary ammonium sulfates and 2 to 3 :g/m³ for secondary ammonium nitrates (Transport Study, Summary and Conclusion, page 9-5) and are thus a small portion of the particulate matter in Imperial County.

5. Proof that Mexico Emissions Impact U.S. Monitors and Adequacy of Alternative Demonstration. The Sierra Club asserts that the state has failed to demonstrate that PM-10 violations in Imperial County are actually being caused by emissions from Mexico and that, even if air quality modeling was not required, the state's "alternative" 179B(d) demonstration (i.e., based on analysis of wind patterns and

population densities) is grossly inadequate. The Sierra Club believes that the State's analysis of wind patterns and population densities does not show that any quantifiable amount of particulates traveled to the U.S. monitors, let alone any amount that would contribute to nonattainment and that there is nothing in the record relating to an actual amount of PM-10 emissions traveling from Mexico to Imperial County. Also, the Sierra Club states that the Imperial Valley/Mexicali Cross Border PM-10 Transport Study (Transport Study), which indicates that international transport is not always the cause of PM-10 violations, were not refuted and are more reliable than the more recent analysis by the state which the Sierra Club claims to be speculative. Finally, the Sierra Club asserts that there is no analysis of the PM-10 transport to Imperial County's border from places other than Mexico (i.e., on the U.S. side).

EPA's response: The State's 179B(d) demonstration, which includes a detailed analysis of spatial plots, wind roses and back trajectories for each of the PM-10 exceedance days during 1992-1994, provides the best qualitative analysis of the emissions from Mexico possible for the Imperial County area for the period in question. Filter analyses often can provide more specificity on where the monitoring emissions are coming

from but, since the types of PM-10 sources are similar on both sides of the border, analysis of the Imperial County samples would not show what portion of the catch originated on the Mexican side of the border.⁴

The Sierra Club suggests that the analyses found in the State's 179B(d) demonstration prove nothing about whether or not emissions from Mexico are impacting U.S. monitors. EPA believes that given the available information, the State has made a good argument that Imperial County is being impacted by Mexico emissions. Additional activities (tracer studies, air monitoring studies, establishment of more meteorology stations at border) could have been conducted, but it is not now possible to create information from new studies for the 1992-1994 timeframe. Thus, EPA believes that the State's 179B(d) analysis of spatial plots, wind roses and back trajectories

⁴ As discussed in the proposed rule, the 1992-1993 Imperial Valley/Mexicali Cross Border PM-10 Transport Study (Final Report, January 30, 1997) includes an analysis of the particles collected in areas within Imperial County where violations have been recorded. This sample analysis determined that geological dust (70-90%), motor vehicle exhaust (10-15%) and vegetative burning (10%) account for the highest contribution to PM-10 concentrations. These are the predominant emissions sources on both sides of the border. Thus, the filter analysis by itself could not be used to determine the extent to which violations might result from international transport.

provides the best determination of PM-10 emissions transport from Mexico.

EPA does not have to refute the Transport Study results in order to make this finding of attainment but for international transport. As discussed in the proposed rule, the additional windfield analyses (Attachment 2 to EPA's TSD, Additional windroses and windfields for January 25, 1993) provided a more detailed analysis, supplementing information from the Transport Study.⁵ The Transport Study is simply an effort to collect air quality data on exceedance days and analyze the data based on wind direction and speed, and the study is thus very similar to the analyses found in the State's demonstration. The Transport Study indicates that several of the exceedance days appear to have stagnant wind conditions (1/19/93, 1/25/93, 7/7/94, 10/17/94 and 12/16/94), but the State's demonstration uses more meteorological data and finds evidence that transport from Mexico is likely even with the stagnant conditions at the surface. For each of the exceedances, the State's analysis took into account additional information not included in the Transport Study. This information included: (a) the number of hours with southerly

⁵ See Attachment 2 to EPA's TSD, Additional windroses and windfields for January 25, 1993.

wind directions that have the potential to carry emissions from Mexico into Imperial County; (b) the back trajectories and back trajectories based on upper-air synoptic wind data, which show the existence of much higher winds from the south that are de-coupled from the surface stagnant conditions, and (c) the windroses developed for all meteorological stations, suggesting that emissions from Mexico likely contributed to the concentrations measured at Brawley. Based on this additional information and the further analyses, the State concluded that Imperial County would not have violated the PM-10 NAAQS but for transport from Mexico. In weighing the "but-for" evidence, EPA also considered it important to consider the relatively low level of the 24-hour exceedances (162 :g/m³, 175 :g/m³, 165 :g/m³, 159 :g/m³, and 153 :g/m³). EPA concedes that information is not available to determine with confidence the exact quantity of PM-10 coming from Mexico, but EPA continues to believe that the State has diligently collected and analyzed available evidence and has successfully demonstrated for each of the exceedance days the probability that Imperial County would not have violated the NAAQS but for the emissions emanating from Mexico.

Finally, EPA believes that there were insufficient data to support a modeling assessment of the potential for long

range transport from the South coast or other California areas to Mexico and back again to Imperial. The Sierra Club presents no evidence that there is transport from U.S. sources outside of Imperial County. Even if evidence existed that the Imperial County monitors were being impacted by long range transport from within the U.S., such evidence would not invalidate the State's demonstration that Imperial County would have attained the NAAQS but for emissions emanating from Mexico.

6. Emissions Inventories. The Sierra Club asserts that the comparison of emissions inventories between Imperial and Mexicali is inadequate due to the uncertainty in the Mexicali inventory, that the Mexicali inventory has not been analyzed for transportability of particles and that the emissions inventory for Imperial County has never been approved by EPA, and thus cannot be used to support a "but-for" finding.

EPA's response: The comparison of Imperial and Mexicali emissions was intended to provide support for the attainment finding. EPA agrees that there is uncertainty in the Mexicali inventory, however, EPA also believes it is useful to examine all available data for this attainment finding. Even if the Mexicali emissions were one-half of 257, as suggested by the Sierra Club, the emissions in the city of Mexicali (200 square

miles) would be about half of the emissions in all of Imperial County (4060 square miles), but the emissions density in Mexicali would still be much greater than in Imperial County. As far as determining the transportability of emissions from Mexicali, as discussed above and in the proposed rule, filter analyses have been examined for the border area and provided some information on the particles characteristics. Finally, as discussed above, the emission inventories used in the State's 179B(d) demonstration are the most current and best available. EPA plans to take action on the inventories when they are submitted as part of the State Implementation Plan (SIP) for Imperial County.

7. Post-1994 Exceedances. The Sierra Club asserts that the 179B(d) determination is inadequate because it fails to consider the post-1994 exceedances. The Sierra Club states that the post-1994 exceedances are numerous, in some cases extreme, and relevant to the attainment but for international transport determination.

EPA's response: EPA believes that the post-1994 exceedances are irrelevant to the determinations at issue. The statutory attainment date for the Imperial County PM-10 moderate nonattainment area is December 31, 1994. EPA believes the State's 179B(d) demonstration adequately demonstrates

attainment by examining the air quality data from 1992-1994. If this demonstration is adequate, reclassification to serious is not required. Section 188(b)(2) provides that: "Within 6 months following the applicable attainment date for a PM-10 nonattainment area, the Administrator shall determine whether the area attained the standard by that date. If the Administrator finds that any Moderate Area is not in attainment after the applicable attainment date ..." the area shall be reclassified. While the second sentence of section 188(b)(2) contains the language quoted by the commentor "is not in attainment after the applicable attainment date," it is clear that in the context of the first sentence of the provision, which is the sentence that establishes the duty to make an attainment determination, the duty is to "determine whether the area attained the standard by that date [referring to the phrase "applicable attainment date" in the opening clause of the sentence]." Thus, EPA's duty is to determine whether the area attained by its attainment date and the language in the second sentence regarding a finding after the attainment date may reasonably be interpreted as referring to the date the finding is made, which would necessarily be after the attainment date, not to the date used in the determination as the benchmark for determining attainment. The question of

whether an area should be reclassified is considered along with whether an area has achieved attainment by the attainment date. Thus, the air quality data from the years 1992-1994 are the relevant data for determining whether Imperial County should be reclassified to serious.

8. SIP Requirements. Finally, the Sierra Club asserts that a 179B(d) waiver cannot be granted unless all moderate area SIP requirements (e.g., RACM, RACT, New Source Review, etc.) are being met.

EPA's response: As discussed in the EPA's proposal, this rulemaking does not address the SIP requirements for Imperial County but only the question of whether or not the State has established that Imperial County attained the NAAQS by December 31, 1994, but for international transport. CAA section 179B(d) states that "any State that establishes to the satisfaction of the Administrator...that such State has attained the national ambient air quality standard for [PM-10] by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be submit to the provisions of section 7512(b)(2)..." which requires reclassification upon failure to attain. This provision does not require a SIP submittal in order for the waiver to be granted. EPA is currently working with the Imperial County

Air Pollution Control District and the California Air Resources Board on developing an approvable State Implementation Plan for Imperial County. A draft of this plan was issued for public review in July 2001.

B. Other Comments Supporting EPA's Final Action

Besides the Sierra Club, all of the commentors support EPA's finding of attainment but for international transport and are extremely opposed to the finding of nonattainment and reclassification to a serious PM-10 nonattainment area. Commentors discussed the overwhelming pollution problem coming from Mexico, the measures their industries have taken to reduce pollution and that it would be unfair to impose additional controls on sources in Imperial County. The Imperial County Air Pollution Control District also provided additional technical analysis supporting the methods used in the State's 179B(d) demonstration.

III. Summary of Final Action

EPA's proposed rule (66 FR 42187) discusses how the State's 179B(d) demonstration is based on a competently collected and examined set of the relevant available information, and reaches a reasoned conclusion that each of the 1992-94 exceedances, which are only slightly above the NAAQS, would likely not have occurred without pollutant

transport from Mexico.

In summary, EPA continues to believe that CAA section 179B(d) does not mandate a modeling demonstration, and that the State has provided evidence sufficient to show that, but for international transport of PM-10, Imperial County would have attained the annual and 24-hour PM-10 NAAQS by the December 31, 1994 deadline.

IV. Administrative Requirements

A. Executive Order 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, (1) have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially

alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that the final finding of attainment pursuant to CAA section 179B(d) would result in none of the effects identified in section 3(f). A finding of attainment under section 179B(d) of the CAA does not impose any additional requirements on an area. This actions does not, in-and-of-itself, impose any new requirements on any sectors of the economy.

B. Executive Order 13211

The final finding of attainment under CAA 179B(d) is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 Fed. Reg. 28355 (May 22, 2001)) because it is not a significant regulatory actions under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined

to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The final finding of attainment under CAA 179B(d) is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, "Federalism," (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, "Federalism," and 12875, "Enhancing the Intergovernmental Partnership." Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct

effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

The final finding of attainment will not have substantial direct effects on California, on the relationship between the national government and California, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As stated above, a finding of attainment under section 179B(d) of the CAA does not impose any additional requirements on an area. This action does not, in-and-of-itself, impose any new requirements on any sectors of the economy. Thus, the

requirements of section 6 of the Executive Order do not apply to this final action.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The final finding of attainment under CAA 179B(d) does not have tribal implications. For the reasons discussed above, the final action will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

As discussed above, the final finding of attainment under CAA 179B(d) does not impose additional requirements on small entities. Therefore, I certify that this final action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that

achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

With respect to EPA's final finding of attainment under CAA 179B(d), EPA notes that this actions in-and-of itself establishes no new requirements. Furthermore, EPA is not directly establishing any regulatory requirements that may significantly impact or uniquely affect small governments, including tribal governments. Thus, EPA is not obligated to develop under section 203 of UMRA a small government agency plan.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's final action because they do not require the public to perform

activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National
parks, Wilderness areas.

Authority: 42 U.S.C. sections 7401-7671q.

Date

Laura Yoshii

Acting Regional Administrator

Region IX